IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.537 OF 2003

Arjun Baburao Ekke ...Petitioner

Versus

Mohemmed Salim Abdul Karim Sheikh
since deceased through legal heirs ...Respondents

Shri D.N.Hungund for the Petitioner.

CORAM : ABHAY S.OKA, J.
DATED : MARCH 26, 2007.

P.C.:

1. Heard learned Advocate appearing for the Petitioner. The Petitioner is the original Plaintiff in a suit filed under section 6 of the Specific Relief Act, 1963. The suit filed by the Petitioner has been dismissed by the learned Trial Judge.

2. The learned Trial Judge held that the Petitioner has failed to establish that he was in exclusive possession of the suit premises prior to 06th May, 1998. The learned Trial Judge negatived the contention raised by the Respondent that he was in possession of the suit premises after the demise of Suryakant Masurlekar on the basis of Agreement dated 25th July, 1996.

3. After having heard the learned Advocate for the Petitioner I find that it is very difficult to interfere with the impugned judgment and decree in a limited jurisdiction under Section 115 of the Code of Civil Procedure, 1908. Under sub section 4 of section 6 of the Specific Relief Act, 1963 even if a suit for possession under section 6 is dismissed on merits, the same does not operate as bar against the Plaintiff from suing to establish his title to the suit property and to recover possession thereof. Thus, notwithstanding the dismissal of the suit, it will be open for the Petitioner to file a suit for possession on the basis of title.

4. Hence, Civil Revision Application is rejected. No orders as to costs. It is made clear that in view of sub section 4 of section 6 of the Specific Relief Act, 1963, notwithstanding the dismissal of the present suit, it will be open for the Petitioner to file a suit for possession on the basis of title.

5. Parties to act upon an authenticated copy of this order.

JUDGE